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OCT 25 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

MARTIN J. EVERSON, ESQ. (State Bar No. 76350)
AARON T. SCHULTZ, ESQ. (State Bar No. 222949)
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Attorneys for Defendant
ALAMEDA COUNTY MEDICAL CENTER - JOHN GEORGE PSYCHIATRIC PAVILLION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ANNETTE M. FILENA, individually and as
successor in interest for decedent, Debra
Kincaid,

Case No.

C07-05462

SBA

Plaintiff,

vs.

ALAMEDA COUNTY MEDICAL CENTER -
JOHN GEORGE PSYCHIATRIC PAVILLION
and DOES 1-100, inclusive,

Defendants.

DECLARATION OF AARON T. SCHULTZ IN
SUPPORT OF DEFENDANT ALAMEDA
COUNTY MEDICAL CENTER - JOHN
GEORGE PSYCHIATRIC PAVILLION'S
NOTICE OF REMOVAL OF ACTION

BY FAX

I, Aaron T. Schultz, certify and declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and an associate with the law firm of GALLOWAY, LUCCHESI, EVERSON & PICCHI, attorneys of record for defendant ALAMEDA COUNTY MEDICAL CENTER - JOHN GEORGE PSYCHIATRIC PAVILLION (hereafter "ACMC"). I have personal knowledge of the facts stated herein, except those based on information and belief, and if called and sworn as a witness, I would and could testify competently under oath thereto. I submit this declaration in support of ACMC's Notice of Removal of Action.

2. I am informed and believe that on September 20, 2007, a complaint was filed against ACMC in the Superior Court of California, County of Alameda, as Case

1

1 No. RG07347289. I am further informed and believe that on September 26, 2007, defendant
2 ACMC was personally served with the complaint.

3 3. Attached hereto as **Exhibit A** are true and correct copies of the Summons,
4 Complaint, Civil Cover Sheet, and Declaration by Decedent's Successor in Interest Annette M.
5 Filena, the Notice of Judicial Assignment for All Purposes, and the Proof of Service of Complaint
6 filed with the Superior Court of Contra Costa County as Case No. RG07347289.

7 4. I am informed and believe that there have been no further proceedings in case
8 No. RG07347289, and no other pleadings have been filed or served upon plaintiff or ACMC in
9 this action.

10 I declare under penalty of perjury under the laws of the United States that the foregoing
11 is true and correct.

12 Executed on this 25th day of October, 2007, in Walnut Creek, California.

13
14 
15 AARON T. SCHULTZ, ESQ.
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SUMMONS
(CITACION JUDICIAL)**NOTICE TO DEFENDANT:**

(AVISO AL DEMANDADO):

ALAMEDA COUNTY MEDICAL CENTER- JOHN GEORGE
PSYCHIATRIC PAVILLION and DOES 1-100, inclusive.**YOU ARE BEING SUED BY PLAINTIFF:**

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ANNETTE M. FILENA, individually and as successor in interest for
decendent, Debra Kincaid,**FILED**
ALAMEDA COUNTY

SEP 20 2007

CLERK OF THE SUPERIOR COURT
By: *[Signature]*

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.legalhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen este citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.legalhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
Superior Court of California, County of Alameda
Rebe C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER

Primer número del caso

007847289

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
John H. Scott (415) 361-9600 (415) 361-9609
Scott Law Firm1375 Sutter Street, Suite 222
San Francisco, CA 94109DATE: SEP 20 2007
(Fecha)

Pat S. Sweeten

Clerk, by *[Signature]*
(Secretario)Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☐
- on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- 4.
- ☐
- by personal delivery on (date):

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
9/94-100 (Rev. January 1, 2004)**SUMMONS**Legal
Solutions
e Plus

Code of Civil Procedure §§ 413.20, 415

Exhibit **A**



FILED
ALAMEDA COUNTY

SEP 20 2007

CLERK OF THE SUPERIOR COURT
By [Signature]

1 John Houston Scott (SBN 72578)
2 Lizabeth N. de Vries (SBN 227215)
3 SCOTT LAW FIRM
4 1375 Sutter Street, Suite 222
5 San Francisco, CA 94109
6 Tel: (415) 561-9600
7 Fax: (415) 561-9609

8 Attorneys for Plaintiff,
9 Annette M. Filena

10
11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 ANNETTE M. FILENA, individually and as
14 successor in interest for decedent, Debra
15 Kincaid,

16 Plaintiff,

17 v.

18 ALAMEDA COUNTY MEDICAL CENTER-
19 JOHN GEORGE PSYCHIATRIC
20 PAVILLION and DOES 1-100, inclusive.

21 Defendants.

Case No. RG 07347289

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

- 1) Wrongful Death, Cal. Civ. Proc. §377.60
- 2) Dependant-Adult Abuse, Cal. Wel. & Inst. Code §15600 *et seq.*;
- 3) Violation of Patient's Rights, Cal. Health & Safety Code §1430(b);
- 4) Negligence, Govt. Code §815.2; Breach of Mandatory Duty Cal. Gov't. Code § 815.6
- 5) Negligence *Per Se*,
- 6) Failure to provide care, 42 U.S.C. §1983; and
- 7) Loss of familial relations, 42 U.S.C. §1983

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

SCOTT LAW FIRM
1375 SUTTER STREET, SUITE 222
SAN FRANCISCO, CA 94109

1 Plaintiff ANNETTE M. FILENA, individually and as successor in interest to the decedent,
2 Debra Kincaid, complains against defendants and each of them and alleges causes of action as
3 follows:

4 **PARTIES**

5 1. Plaintiff ANNETTE FILENA is and was at all times relevant hereto a citizen of
6 the United States. She is the mother, heir through intestate succession and successor in interest of
7 the decedent, Debra Kincaid.

8 2. The decedent, Debra Kincaid, was born on 12/7/58, and suffered from mental
9 illness including schizoaffective disorder.

10 3. Defendant ALAMEDA COUNTY MEDICAL CENTER- JOHN GEORGE
11 PSYCHIAITRIC PAVILLION (hereinafter "ACMC") is and was at all times relevant hereto a
12 municipal hospital with a psychiatric department located in the John George Psychiatric Pavilion
13 in San Leandro, California. The public hospital is organized and operating under the laws of the
14 State of California. It is and was at all time relevant hereto a locked skilled-nursing facility. It is
15 also licensed and regulated by the State of California Department of Health Services. During all
16 relevant times, the ACMC and Does 1-100 provided medical care and treatment to the decedent,
17 Debra Kincaid, a gravely disabled adult, while she was in this locked facility.

18 4. The true names and capacities, whether individual, corporate, associate or
19 otherwise, of defendants Does 1 through 100 inclusive, are unknown to the plaintiff, who
20 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and
21 thereon alleges that each of the defendants designated herein as a defendant was responsible in
22 some manner for the events and happenings referred to herein. Plaintiff will amend the complaint
23 when the true identities of the unknown defendants become known.

24 5. At all times herein mentioned each of the defendants was the agent, servant or
25 employee of each of the remaining defendants and was at all times acting under color of state law
26 and within the course and scope of said agency and employment.

27 6. Each individual defendant to be named in the future, if any, may be indemnified
28 by the employer, the ACMC, under Cal. Gov't. Code § 825 *et. seq.*

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 7. Plaintiff has exhausted the requisite administrative remedies and has complied
2 with the requirements of California Government Code § 910 *et seq.* Plaintiff filed a tort claim
3 against the Alameda County Medical Center on 2/6/07, which the APMC rejected on 3/23/07.

4 **FACTS RELEVANT TO ALL CAUSES OF ACTION**

5
6 8. On 11/30/06, Debra Kincaid (hereafter referred to as "Debra") was admitted to the
7 APMC after being involuntarily detained under Cal. Wel. & Inst. Code Section 5150.

8 9. Plaintiff is informed and believes and thereon alleges that shortly after the 72-hour
9 period for the Cal. Wel. & Inst. Code § 5150 passed on or about 12/3/06, Debra sought release on
10 multiple occasions from the APMC. In response to her requests, APMC agents including Alfeo
11 Raminajes, M.D. refused to release Debra from their locked facility, but instead requested that
12 Debra be involuntarily conserved on 12/6/06. The family was not notified of this proceeding.
13 Marie Alfonso was appointed as her conservator on 12/14/06.

14 10. In the APMC's Intake Evaluation Form dated 11/30/06, Debra is described as alert
15 and oriented. She was moving around the room, singing a song about beer, and at one point
16 voluntarily dropped to the ground to demonstrate her strength by completing 9 push-ups.

17 11. Upon admission and throughout her stay at APMC, Debra and her mother advised
18 the APMC agents that she suffered from sleep apnea and required a CPAP machine while she
19 slept. APMC agents allowed Debra to use her CPAP machine during her previous hospitalization
20 on 9/23/06. But for this hospitalization, APMC agents refused to permit her to use the CPAP
21 machine. Debra also advised APMC staff that she was diabetic, which was also noted in her
22 medical records.

23 12. Plaintiff alleges on information and belief that APMC staff failed to treat Debra's
24 sleep apnea and diabetes during her stay from 11/30/06 through her death on 12/30/06.

25 13. From 12/13/06 through 12/27/06, the APMC records, including but not limited to
26 its Daily Psychiatric Progress Notes, Progress Records, APMC Occupational/Activity Therapy
27 Participation Logs and medical notes state that Debra complained about feeling overmedicated,
28 experiencing episodes of dizziness, feeling drowsy and having a dry cough. The staff further

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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1 noted that Debra appeared progressively more withdrawn, poorly kempt, mildly tremulous and
2 unsteady on her feet. During this period, the ACMC records demonstrate that Debra's
3 communication, socialization, and motor skills significantly declined.

4 14. On 12/28/06, the ACMC records state that Debra was observed with tremors, off
5 balance with an unsteady gait, and required assistance to ambulate to the bathroom. She was
6 observed slumped over her bed, or sitting up in bed, hunched over. The patient was reported to be
7 falling asleep in her breakfast. Further, she had garbled speech and was difficult to understand.
8 She was asked to but could not write her own name. The charge registered nurse notified Debra's
9 treating psychiatrist, Alonzo Johnson, M.D., that she was over medicated and so weak that she
10 could not stand or feed herself. He responded by instructing the staff to discontinue assisting
11 Debra with activities such as feeding.

12 15. Plaintiff alleges on information and belief that Debra continually requested that
13 she be seen by a different doctor than Alonzo Johnson, M.D. Debra's request was finally granted
14 on 12/29/06 when she was evaluated by a doctor specializing in internal medicine, Ray Yeh,
15 M.D., who noted that her sedation was probably secondary to medications and ordered that the
16 ACMC discontinue Ativan and Benadryl.

17 16. On 12/29/06, despite the recommendations from Dr. Yeh, the treating psychiatrist
18 Dr. Johnson wrote that Debra was "demonstrating more dependent behavior" and "flu-like
19 symptoms" and wrote an order for Ativan as a PRN, Benadryl, Lithium, Haldol, Cogentin, and
20 cold medication including nasal spray.

21 17. Plaintiff alleges on information and belief that on 12/29/06, Debra presented her
22 request for release at a hearing before ACMC managing agents, which they denied.

23 18. Thereafter, the ACMC agents administered cold medications, and, two more doses
24 of Ativan on 12/30/06 at 00:10 and 06:00 a.m.

25 19. During the month of December, nurses, occupational therapists, family members,
26 the patient herself and patients' rights advocates reported to the Multidisciplinary Team in charge
27 of Debra's care that they observed adverse effects of psychoactive medications and drug-drug
28

1 interactions by conveying concerns about the patient's slurred speech, difficulty walking,
2 drowsiness, abnormal vital signs, high blood sugar, tremors and lack of coordinated movements.

3 20. During the month of December 2006, plaintiff frequently communicated with staff
4 at APMC, including but not limited to Ellen Woods, a social worker at APMC, to express her
5 concerns that Debra's health was deteriorating significantly. On 12/29/06, plaintiff implored Ms.
6 Woods to do something about Debra's deteriorating physical condition. During this conversation,
7 plaintiff expressed that she was afraid that Debra was going to die at APMC. Ms. Woods assured
8 her that her daughter was "fine."

9 21. On 12/30/06, at 7:30 a.m., Debra was found unresponsive on the floor next to her
10 bed in her room in Unit B of the APMC John George Psychiatric Pavilion. Debra was transferred
11 to an acute care emergency facility at Eden Medical Center and was pronounced dead shortly
12 after arrival.

13 22. Plaintiff alleges on information and belief that Debra's death was caused by the
14 combined effects of psychiatric medication, cold medication, untreated diabetes mellitus and
15 untreated sleep apnea while she was forced to remain in the custody and control of a locked
16 facility, APMC.

17 23. Defendants knew or should have known from the facts available to them that
18 failing to (1) plan for or implement patient care that addressed Debra Kincaid's diabetes and sleep
19 apnea; (2) evaluate and monitor this patient's risk for adverse effects of psychoactive medications
20 and drug-drug interactions; or (3) ensure that necessary equipment including but not limited to a
21 CPAP machine and an electrocardiogram machine be available to prevent harm would cause
22 Debra Kincaid serious harm or death.

23 24. The APMC maintained and implemented a custom and practice of being
24 indifferent to the serious medical needs of patients confined to their locked psychiatric facilities.
25 The defendants knew or should have known that as a result of said deliberate indifference
26 vulnerable psychiatric patients in their custody and control, such as Debra Kincaid, would suffer
27 serious injuries or death. The APMC failed to provide adequate training and equipment to its
28 staff and it was foreseeable that patients confined to their locked psychiatric facilities would

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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1 suffer serious injuries or death as a result. In addition, the ACMC authorized, encouraged and
2 ratified the acts and omissions alleged herein.

3 25. As a result of the acts and omissions alleged herein, Debra Kincaid died.
4

5 DAMAGES

6 26. The decedent suffered general damages including pain and suffering due to the
7 defendants' acts and omissions that ultimately led to her medically slowed and tortured death, in
8 an amount to be determined according to proof.

9 27. Plaintiff incurred burial and funeral expenses in an amount to be determined
10 according to proof.

11 28. Plaintiff has suffered and will continue to suffer loss of society, comfort, affection,
12 and familial relations in an amount to be determined according to proof.

13 29. The acts and/or omissions of the individual defendants, either those to-be named or
14 identified as Does, and each of them, were willful, wanton, reckless, malicious, and oppressive.
15 Accordingly, plaintiff is entitled to seek punitive and exemplary damages against each of them.

16 30. The plaintiff was required to retain counsel and is entitled to costs and attorneys'
17 fees should she prevail in this action.
18

19 FIRST CAUSE OF ACTION
20 [Wrongful Death - C.C.P. §377.60]

21 31. The plaintiff hereby re-alleges and incorporates by reference as though fully set
22 forth herein all prior paragraphs of this Complaint.

23 32. Defendants and each of them, negligently, recklessly and/or willfully failed to
24 comply with the applicable provisions of California and federal laws and regulations as set forth
25 below in the second, third and fourth causes of action, and which include the following:

- 26 a. Provide skilled-nursing care and physician and psychiatric services;
27 b. Follow, implement, and adhere to all medical orders;
28

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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1 c. Provide Debra with all necessary equipment to ensure her health and safety,
2 including but not limited to a CPAP machine and the use of an electrocardiogram;

3 d. Provide Debra with prescription diabetic medication and monitor blood glucose
4 levels and blood levels as required when prescribing and administering psychotropic drugs;

5 e. Monitor, accurately record, report and adjust Debra's condition and responses to
6 psychotropic and drug-drug interactions;

7 f. Report meaningful changes in Debra's health and well-being to the attending
8 physicians and psychiatrists;

9 g. Establish and implement a patient-care plan for Debra based upon and including
10 without limitation an on-going process of identifying her needs;

11 h. Follow proper nursing, physician and psychiatric care standards to maximize the
12 health, safety, and well-being of Debra;

13 i. Note and properly react to emergency conditions and timely transfer Debra to an
14 acute care facility or otherwise act when conditions so indicate; and

15 j. Provide appropriate screening, hiring requirements, training and supervision to all
16 ACMC agents entrusted with Debra's care.

17 k. Comply with California Welfare & Institutions Code to ensure that the family was
18 informed so that they could participate in Debra's care, including but not limited to the right to:
19 be informed about her care (Cal. Wel. & Inst. Code § 5238.1); participate in treatment and
20 rehabilitation decision (*Id.* at §§ 5600.2(a)(2), 5600.4(c)); be advised of certification hearings,
21 judicial review, conservatorship hearings, and other due process proceedings (*Id.* at §§
22 5256.4(c), 5276, 5350.2); appointed conservator or nominate conservator based on preferences
23 for family members (Cal. Prob. Code §§ 1810 – 1813, *et seq.*).

24 33. Debra Kincaid died as the result of the Defendants' acts and omissions as alleged
25 herein.

26 34. The ACMC is liable for the acts and omissions of their agents and employees
27 under the doctrine of *respondeat superior*.

28 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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SECOND CAUSE OF ACTION

[Cal. Wel. & Inst. Code §§ 15600 *et seq.* - Dependent-Adult Abuse]

35. The plaintiff hereby re-alleges and incorporates by reference as though fully set forth herein all prior paragraphs of this Complaint, including but not limited to paragraph 32.

36. Pursuant to the provisions of California Welfare and Institutions Code §15610.23, decedent Debra Kincaid was at all times relevant hereto a dependent adult.

37. Pursuant to the provisions of California Welfare and Institutions Code §15610.17, APMC and Does 1-100 were at all times care custodians for or in a trusting relationship with decedent, Debra Kincaid.

38. APMC and Does 1-100 engaged in physical abuse against Debra Kincaid by giving her psychotropic drugs for improper purposes under Cal. Wel. & Inst. Code §15610.63(f).

39. APMC and Does 1-100 engaged in neglect against Debra Kincaid by failing to provide for her physical and mental-health needs under Cal. Wel. & Inst. Code §15610.57.

40. In doing the acts and omissions complained of herein, APMC and Does 1-100 failed to use the degree of care that a reasonable person in the same situation would have used to protect Debra Kincaid from health and safety hazards and provide for her physical and mental-health needs by failing to:

- a. implement a care plan which addressed the decedent's diabetes and sleep apnea;
- b. ensure that the drugs that were prescribed and administered by the defendants would not cause serious harm to the decedent;
- c. provide decedent with adequate care or equipment including but not limited to a CPAP machine and an electrocardiogram; and,
- d. comply with the state and federal requirements listed in the third cause of action below and incorporated herein by reference.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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SAN FRANCISCO, CA 94109

1 41. Defendants' acts and omissions alleged herein constituted neglect and physical
2 abuse, which caused the decedent pain and suffering prior to her death. Further, they caused her
3 death.

4 42. Defendants' acts and failure to act were willful and done with recklessness,
5 malice, oppression and or fraud, and with deliberate disregard of the likelihood that the decedent
6 would suffer harm or death.

7 43. Defendants' and their agents' conduct was authorized by the defendants' trustees,
8 officers, directors, managing agents or treating psychiatrists or physicians. Alternatively, this
9 conduct was ratified by a defendants' trustee, officer, director, managing agent, or treating
10 psychiatrist or physician who knew of the agents' wrongful conduct and adopted or approved the
11 conduct after it occurred. Plaintiff incorporates by reference paragraph 17 here.

12 44. The ACMC is liable for the acts and omissions of their agents and employees
13 under the doctrine of *respondeat superior*.

14 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

15 **THIRD CAUSE OF ACTION**

16 [Health & Safety Code § 1430(b) - Patients' Bill of Rights Violations]

17 45. The plaintiff hereby re-alleges and incorporates by reference as though fully set
18 forth herein all prior paragraphs of this Complaint, including but not limited to paragraph 32, and
19 those paragraphs citing further violations of Debra's rights in the first, second, and fourth causes
20 of action.

21 46. Pursuant to the provisions of California Health & Safety Code §1430(b), decedent
22 Debra Kincaid was at all times relevant hereto a patient in the defendants' care with protections
23 under the Patients' Bill of Rights under Title 22 of the California Code of Regulations and all
24 other state and federal laws and regulations.

25 47. The plaintiff alleges on information and belief that despite their awareness of the
26 risks to Debra's health and well-being, defendants repeatedly and flagrantly violated several Title
27 22 sections in the California Code of Regulations, Div. 5 Ch. 1, including but not limited to:
28

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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- 1 a. failed to plan and implement patient care for Debra Kincaid's diabetes and sleep
- 2 apnea under (1) 3-70215(c);
- 3 b. APMC's psychiatrists or clinical psychologists' failed to be responsible for the
- 4 diagnostic formulation for their patients and the development and implementation
- 5 of each patient's treatment plan under (2) 6-70577(d)(1);
- 6 c. failed to identify or recommend to the administration the equipment and supplies
- 7 necessary for emergency medical problems under (3) 6-70577(d)(4)(A);
- 8 d. subjected Debra to physical abuse through the misuse of medications under
- 9 72315(b);
- 10 e. failed to develop and/or implement a plan of care specifying the data to be
- 11 collected for use in evaluating the effectiveness of the drugs and the occurrence of
- 12 adverse reactions under 72319(j)(2);
- 13 f. violated Debra's right to be free from mental and/or physical abuse under section
- 14 72527(a)(9);
- 15 g. violated Debra's right to be free from the use of psychotherapeutic drugs for the
- 16 purpose of patient discipline and/or for staff convenience under section
- 17 72527(a)(23)); and,
- 18 h. violated Debra's right to be free from the use of chemical restraints other than
- 19 during an emergency under section 72527(a)(23).

20 48. In addition, and also despite their awareness of the risks to Debra's health and
21 well-being, defendants repeatedly and flagrantly violated several provisions of Title 42 of the
22 Federal Code of Regulations, including the following:

- 23 a. violated Debra's right to be free from chemical restraints imposed for purposes of
- 24 discipline or convenience (42 CFR § 483.13(a);
- 25 b. failed to review and revise said defendants' assessment of Debra's needs as her
- 26 condition changed (42 CFR § 483.20(b)(5);
- 27 c. failed to develop a comprehensive care plan for meeting Debra's needs (42 CFR
- 28 483.20(d); and,

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 d. failed to provide Debra with the necessary care and services required to attain or
2 maintain the highest practicable physical, mental and psychosocial well-being (42
3 CFR § 483.25).

4 49. Under § 1430(b), defendants will be found strictly liable for these violations, a
5 statutory penalty will attach.

6 50. Further, under this section, plaintiff is entitled to her attorney fees and costs.

7 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

8 **FOURTH CAUSE OF ACTION**

9 [Negligence/Breach of Mandatory Duties - Cal. Govt. Code §§ 815.2, 815.6]

10
11 51. The plaintiff hereby re-alleges and incorporates by reference as though fully set
12 forth herein all prior paragraphs of this Complaint, including but not limited to paragraph 32 and
13 those in the second and third causes of action.

14 52. Defendants owed mandatory duties to the decedent, a dependent adult placed in
15 the County's custody at APMC.

16 53. Defendants were negligent and breached their mandatory duties to provide
17 appropriate and adequate medical care and treatment to the decedent while in their custody and
18 care, including but not limited to the above-cited state and federal laws and regulations, and the
19 following statutory duties:

- 20 a. Govt. Code § 855.4 to use due care in the provision of medical services;
21 b. Govt. Code § 855(a) to provide adequate or sufficient medical equipment,
22 personnel or facilities;
23 c. Govt. Code § 855.8 to use due care in administering treatment prescribed for
24 mental illness;
25 d. Govt. Code § 856 to use due care in carrying out the conditions of confinement for
26 mental illness; and
27 e. Wel. & Inst. Code §§ 15600 *et seq.* to provide medical care for the physical and
28 mental health needs of a dependent adult.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

SCOTT LAW FIRM
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SAN FRANCISCO, CA 94109

1 54. As a result of defendants' breach of their mandatory duties, plaintiff and decedent
2 suffered the injury and harm alleged herein.

3 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

4
5 **FIFTH CAUSE OF ACTION**
6 **[NEGLIGENCE PER SE]**

7 55. The plaintiff hereby re-alleges and incorporates by reference as though fully set
8 forth herein all prior paragraphs of this Complaint, in particular the state and federal laws and
9 regulations cited in plaintiff's first, second, third and fourth causes of action.

10 56. The plaintiff alleges that the defendants violated numerous state and federal laws
11 and regulations, cited above, all of which were written and intended to apply to this decedent for
12 her survival claims and to this plaintiff for her wrongful death claims.

13 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

14
15 **SIXTH CAUSE OF ACTION**
16 **[42 USC § 1983 - FAILURE TO PROVIDE MEDICAL CARE]**

17 57. The plaintiff hereby re-alleges and incorporates by reference as though fully set
18 forth herein all prior paragraphs of this Complaint.

19 58. Plaintiff is informed and believes and alleges that the lack of care provided to
20 Debra Kincaid was consistent with the ACMC's customs, practices, policies, and training.

21 59. The defendants, and each of them, acted under color of state law and deprived the
22 decedent of necessary care for a serious medical condition in violation of the Fourteenth
23 Amendment to the United States Constitution.

24 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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SEVENTH CAUSE OF ACTION
[42 USC § 1983 – FAMILIAL ASSOCIATION]

60. The plaintiff hereby re-alleges and incorporates by reference as though fully set forth herein all prior paragraphs of this Complaint.

61. Plaintiff is informed and believes and alleges that the lack of care provided to Debra Kincaid was consistent with the APMC's customs, practices, policies, and training.

62. The defendants, and each of them, deprived plaintiff of her familial relation with her daughter, decedent Debra Kincaid, in violation of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

SCOTT LAW FIRM
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SAN FRANCISCO, CA 94109

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendants, as follows:

1. For compensatory and economic damages according to proof;
2. For general damages according to proof;
3. For punitive damages against the individual defendants according to proof;
4. For an award of attorneys' fees and costs;
5. For statutory fees and penalties, including but not limited to a monetary award for each violation under Cal. Health & Safety Code § 1430(b) and treble damages under Cal. Civ. Code § 3345.
6. For an order directing the APMC and its agents and employees to do the following:
 - a. Prepare patient-care plans (1) after obtaining information from the patients and their families, and their previous medical records; (2) considering how to address sleep apnea and diabetes conditions; (3) where the Multidisciplinary Treatment Team monitors, reports, and reviews the plan upon any noted changes in the patients' physical or mental health.
 - b. Provide training to staff regarding (1) comprehensive intake process to ensure that patients' medical histories and conditions are properly noted and considered in the patient's treatment plan; (2) medication management for psychiatric patients to identify and report symptoms for patients exhibiting over medication.
 - c. Provide patients and staff with necessary equipment, including but not limited to CPAP machines and electrocardiograms.
 - d. Ensure that psychiatrists, hospitalists/internists, and pharmacists are consulting about drug-drug interactions and how to manage psychiatric patients and their drug levels, and, that these issues are being communicated to staff who monitor the patients.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

SCOTT LAW FIRM
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SAN FRANCISCO, CA 94109

1 7. For an order appointing an independent monitor at the expense of ACMC to ensure
2 compliance with Title 22 and federal regulations for a time to be determined by the Court.

3 8. For prejudgment interest; and

4 9. For other and further relief as the Court may deem just, necessary and appropriate.

5
6 Dated: September 20, 2007

SCOTT LAW FIRM

7
8 By Elizabeth N. de Vries
9 Elizabeth N. de Vries
10 Attorney for plaintiff

11 **REQUEST FOR JURY TRIAL**

12 The plaintiff respectfully requests a jury for those claims that a jury may determine.

13 Dated: September 20, 2007

SCOTT LAW FIRM

14
15 By Elizabeth N. de Vries
16 Elizabeth N. de Vries
17 Attorney for plaintiff

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- 14 -

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

SCOTT LAW FIRM
1375 SUTTER STREET, SUITE 222
SAN FRANCISCO, CA 94109

ATTORNEY OR PARTY WITHOUT ATTORNEY (Print name, firm, and address): John H. Scott, SBN: 72578 Lizabeth N. de Vries, SBN: 227215 SCOTT LAW FIRM 1375 Sutter Street, Suite 222 San Francisco, CA 94109 TELEPHONE NO.: (415) 561-9600 FAX NO.: (415) 561-9609 ATTORNEY FOR (Name): Plaintiff		010 5976230 FILED ALAMEDA COUNTY SEP 21 2007 CLERK SUPERIOR COURT By: <i>[Signature]</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse CASE NAME: Annette Filena v. Alameda County Medical Center, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unfiled (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 077847289 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/WO (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PIPD/WO (23) Non-PIP/WO (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WO tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (06) <input type="checkbox"/> Other collections (06) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Will of mandate (32) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.463) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (26) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary, declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): **Seven**

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **September 20, 2007**
John H. Scott, SBN: 72578
 (TYPE OR PRINT NAME) *[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

 Form Approved for Mandatory Use
 Judicial Council of California
 (Casefile form, July 1, 2007)

CIVIL CASE COVER SHEET

Legal

Solutions

4/1/05

 Cal. Rules of Court, rules 3.210, 3.220, 3.400-3.463, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10

1 John Houston Scott (SBN 72578)
2 Elizabeth N. de Vries (SBN 227215)
3 SCOTT LAW FIRM
4 1375 Sutter Street, Suite 222
San Francisco, CA 94109
Tel: (415) 561-9600
Fax: (415) 561-9609

5 Attorneys for Plaintiff,
6 Annette M. Filena

FILED
ALAMEDA COUNTY

SEP 20 2007

CLERK OF THE SUPERIOR COURT
By S. John Debra
Debra

7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

11 ANNETTE M. FILENA, individually and as
12 successor in interest for decedent, Debra
Kincaid,

13 Plaintiff,

14 v.

15 ALAMEDA COUNTY MEDICAL CENTER-
16 JOHN GEORGE PSYCHIATRIC
PAVILLION and DOES 1-100, inclusive.

17 Defendants.
18

Case No.: **07947289**

DECLARATION BY ANNETTE M.
FILENA, SUCCESSOR IN INTEREST TO
THE ESTATE OF HER DECEASED
DAUGHTER, DEBRA ANN MARIE
KINCAID

[Cal. Civ. Proc. Code § 377.32]

19
20 I, Annette M. Filena, declare as follows:

21 1. Decedent Debra Kincaid was my daughter at the time of her death in Castro
22 Valley, California, on December 30, 2006. A true and correct certified copy of her death
23 certificate is attached as Exhibit A.

24 2. No proceeding is now pending in California for the administration of the
25 decedent's estate.

26 3. I am the decedent's successor in interest, succeed to the decedent's interest in this
27 action, and am authorized to act on behalf of the decedent because my daughter died without a
28

- 1 -

DECLARATION BY ANNETTE M. FILENA, SUCCESSOR IN INTEREST

THE SCOTT LAW FIRM
1375 SUTTER STREET, SUITE 222
SAN FRANCISCO, CA 94109

1 will and without any issue so that I am a beneficiary of her estate under California Code of Civil
2 Procedure §§ 377.10(b).

3 4. No other person has a superior right to bring this action or to be substituted for the
4 decedent in the pending action.

5 5. I declare under the penalty of perjury under the laws of the state of California that
6 the foregoing is true and correct.

7 Executed at Fremont, California, on this 20 day of September,
8 2007.

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11 By: Annette M. Filena
12 Annette M. Filena
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A

EXHIBIT A

CERTIFICATION OF VITAL RECORD

ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
PUBLIC HEALTH DEPARTMENT

CERTIFICATE OF DEATH		3200601008595	
1. DECEASED'S NAME Debra		2. DATE OF BIRTH 12/07/1958	
3. SEX Female		4. RACE White	
5. MARITAL STATUS Never Married		6. DATE OF DEATH 01/03/2007	
7. PLACE OF BIRTH CA		8. COUNTY OF BIRTH Alameda	
9. DECEASED'S ADDRESS 35687 Cabrillo Drive Fremont, CA 94556		10. DECEASED'S PHONE 94556	
11. DECEASED'S OCCUPATION Self Employed		12. DECEASED'S EMPLOYER 30	
13. DECEASED'S SOCIAL SECURITY NUMBER 562-27-8552		14. DECEASED'S MEDICAL HISTORY None	
15. DECEASED'S RELIGION None		16. DECEASED'S ETHNICITY None	
17. DECEASED'S EDUCATION None		18. DECEASED'S MARRIAGE HISTORY None	
19. DECEASED'S DEATH HISTORY None		20. DECEASED'S DEATH HISTORY None	
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STATE OF CALIFORNIA
COUNTY OF ALAMEDA

This is a true and exact reproduction of the document officially registered and filed with the Alameda County Health Care Services Agency

DATE ISSUED: **08/21/2007**

HEALTH OFFICER AND LOCAL REGISTRAR
ALAMEDA COUNTY, CALIFORNIA



